

FRED P. BLUME

IBLA 76-744 Decided November 9, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W-53959.

Set aside and remanded.

1. Oil and Gas Leases: Consent of Agency—Oil and Gas Leases: Discretion to Lease—Oil and Gas Leases: Lands Subject to

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

APPEARANCES: Fred P. Blume, pro se; Erol R. Benson, Esq., Office of the General Counsel, Department of Agriculture, Ogden, Utah, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Fred P. Blume appeals from the July 12, 1976, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer W-53959. As the sole basis for its decision, BLM stated:

The lands applied for are within the South Wyoming Range Wilderness Candidate Study Area No. 75. Forest Service recommends no leasing.

Appellant argues that the land is only within a "study" area and has not been withdrawn from leasing. He indicates a willingness to accept a lease subject to reasonable stipulations. The Forest Service responds that a lease with "a no surface occupancy" stipulation, which would allow unitization with adjacent oil and gas leases, would be in the public interest. It then requested a remand of the case to BLM for further consideration.

[1] Appellant is correct in stating that land within a wilderness candidate study area is not withdrawn from oil and gas leasing. In the absence of a withdrawal of public lands from oil and gas leasing, such lands are subject to leasing at the discretion of, and under conditions imposed by, the Secretary of the Interior. Stanley M. Edwards, 24 IBLA 12, 19, 83 I.D. 33, 35 (1976); Esdras K. Hartley, 23 IBLA 102, 103 (1975). To exercise this discretion, BLM should make an independent determination on whether leasing the land, with appropriate stipulations, would be in the public interest. Stanley M. Edwards, *supra* at 21, 83 I.D. at 36; Esdras K. Hartley, *supra* at 105. Recommendations by the Forest Service should be considered by BLM, but are not conclusively determinative.

In the present case, the Forest Service has revised its recommendation by suggesting that appellant's lease could be issued subject to a "no surface occupancy" stipulation. It appears appellant may be willing to accept a lease with such a stipulation, or other reasonable stipulations. Therefore, we set aside the BLM decision and remand the case for independent consideration by BLM of whether issuance of the lease subject to appropriate stipulations is in the public interest. The nature of any stipulation should be determined by BLM after considering all the factors involved.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further consideration.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

